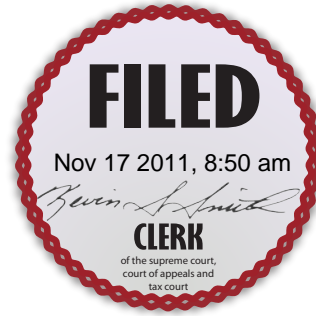


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LEROY G. MEAHL,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 36A01-1104-DR-188
)	
DONNA J. MEAHL,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE JACKSON SUPERIOR COURT
The Honorable Bruce A. MacTavish, Judge
Cause No. 36D02-1008-DR-352

NOVEMBER 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Respondent-Appellant Leroy Meahl appeals the trial court's order dissolving his marriage to Petitioner-Appellee Donna Meahl.

We affirm.

ISSUES

Leroy raises two issues for our review; however, we must first decide an issue raised by Donna in her cross-appeal:

- I. Whether the trial court erred by determining that the antenuptial agreement applies in the event of a dissolution.

Restated, Leroy's two issues on appeal are:

- II. Whether the trial court erred by awarding Donna spousal maintenance.
- III. Whether, if the award of spousal maintenance is proper, the trial court erred in the amount and manner it ordered Leroy to pay.

Finally, Donna's remaining issue on cross-appeal is:

- IV. Whether the trial court erred when it determined the amount of attorney's fees to award to Donna.

FACTS AND PROCEDURAL HISTORY

Leroy and Donna signed an antenuptial agreement ("Agreement") on October 23, 1986. They were then married on October 25, 1986. On August 19, 2010, Donna filed for dissolution of the marriage. Following a final hearing, the trial court issued its findings and conclusions and determined that the Agreement is applicable in a dissolution

proceeding, that Donna is incapacitated and entitled to spousal maintenance, and that Donna is entitled to attorney's fees. This appeal ensued.

DISCUSSION AND DECISION

STANDARD OF REVIEW

Prior to the commencement of the final hearing, Donna filed a request for findings of fact and conclusions of law in accordance with Indiana Trial Rule 52(A). When the trial court enters findings of fact and conclusions of law, we apply a two-tiered standard of review: first, we determine whether the evidence supports the findings and, second, whether the findings support the judgment. *S.C. Nestel, Inc. v. Future Const., Inc.*, 836 N.E.2d 445, 449 (Ind. Ct. App. 2005). The trial court's findings and conclusions will be set aside only if they are clearly erroneous. *Id.* "Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them." *St. John Town Bd. v. Lambert*, 725 N.E.2d 507, 518 (Ind. Ct. App. 2000). A judgment is clearly erroneous when it is not supported by the findings of fact. *Id.* Put another way, a judgment is clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *S.C. Nestel, Inc.*, 836 N.E.2d at 449. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *St. John Town Bd.*, 725 N.E.2d at 518. Moreover, we will not reweigh the evidence or assess witness credibility. *S.C. Nestel, Inc.*, 836 N.E.2d at 449.

I. APPLICATION OF ANTENUPTIAL AGREEMENT TO DISSOLUTION ACTION

Before turning to the issues raised by Leroy, we must determine the first of two issues raised by Donna on cross-appeal. Donna argues the trial court erred in concluding the Agreement applies in the event of divorce. She also argues that the standard of review stated in the preceding paragraph does not apply to this particular issue because the trial court did not enter findings or conclusions on this issue. However, the trial court did enter findings and conclusions on this issue, *see* Appellant's App. pp. 8, 14, and we will proceed under the stated standard of review.

Antenuptial agreements are to be construed in the same manner as any other legal contract. *Pardieck v. Pardieck*, 676 N.E.2d 359, 363 (Ind. Ct. App. 1997), *trans. denied*. The overriding concern in interpreting a contract is the parties' intent as expressed in the language of the contract. *Id.* The court must read all of the provisions of the agreement as a whole in order to arrive at an interpretation that harmonizes the agreement's words and phrases and gives effect to the parties' intentions as established at the time they entered the contract. *Daugherty v. Daugherty*, 816 N.E.2d 1180, 1184 (Ind. Ct. App. 2004).

The Agreement provides, in pertinent part, as follows:

WHEREAS, the parties desire that all property now owned or hereafter acquired by each of them shall, for testamentary disposition, be free from any claim of the other that may arise by reason of their contemplated marriage;

IT IS, THEREFORE, AGREED:

1. Property to be Separately Owned. After the solemnization of the marriage between the parties, each of them shall separately retain all rights

in his or her own property, whether now owned or hereafter acquired, and each of them shall have the absolute and unrestricted right to dispose of such separate property, free from any claim that may be made by the other by reason of their marriage, and with the same effect as if no marriage had been consummated between them, however, in the future, funds or property that the parties elect and title as joint shall be joint with full rights of survivorship.

2. Waiver of Right of Election. Each of the parties waives and releases any rights as surviving spouse to elect to take against the other's will, whether heretofore or hereafter made. This provision shall constitute a waiver and release of the right of election in accordance with the requirements of Indiana Code 29-1-3-1, et. seq. or of the same or similar law of any other jurisdiction which may be applicable.

Appellee's App. p. 3. Despite the references to testamentary disposition in the Agreement, the Agreement, as a whole, contains nothing limiting the parties' rights to hold and retain all rights to their separate property under any circumstances. The Agreement makes it clear that Donna and Leroy are to independently retain all rights in their separate property and are to continue to have the "absolute and unrestricted right to dispose of such separate property, *free from any claim that may be made by the other by reason of their marriage.*" *Id.* Therefore, the trial court did not commit error by determining that the Agreement is applicable to the parties' dissolution action. *See Gillette v. Gillette*, 835 N.E.2d 556, 562-63 (Ind. Ct. App. 2005) (holding that premarital agreement prohibited husband from acquiring share of wife's separate property by virtue of their marriage where agreement contained words of estate plans, did not specifically mention divorce, and stated that husband and wife "shall separately retain all rights in his or her own property, whether now owned or hereafter acquired, and each of them shall

have the absolute and unrestricted right to dispose of such separate property free of any claim that may be made by the other by reason of their marriage, and with the same effect as if no marriage had been consummated between them”).

II. AWARD OF SPOUSAL MAINTENANCE

We turn now to the issues raised by Leroy in his Appellant’s Brief. Leroy contends that the trial court erred by determining that Donna is entitled to spousal maintenance pursuant to Indiana Code section 31-15-7-2(1) (1997).

Indiana Code section 31-15-7-2(1) provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

The trial court has broad discretion to make an award of maintenance, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. *Bizik v. Bizik*, 753 N.E.2d 762, 768-69 (Ind. Ct. App. 2001), *trans. denied*.

At the hearing, Donna testified that she has high cholesterol and osteoporosis in addition to arthritis and constant cervical spine pain. Donna also testified that she cannot sit for several hours without getting up to move around and that she is unable to lift things.

In addition to Donna’s testimony, the court received into evidence the deposition testimony of Donna’s primary treating physician, Dr. David Stout. Dr. Stout testified that

Donna stated she had pain in her neck. His examination revealed that the range of motion of Donna's neck was somewhat limited, and recent x-rays revealed the existence of severe degenerative changes in Donna's cervical spine. Donna also had x-rays of her hips due to complaints of pain. These x-rays showed arthritic changes in her hips, including a bone spur in her right hip. Dr. Stout diagnosed Donna's neck and hip problems as osteoarthritis. Additionally, Donna suffers from osteoporosis. At the time of the exam, Donna informed Dr. Stout that she "has trouble sitting in a chair, she has trouble getting out of a chair, she has pain with walking, she has pain with looking up, looking down, looking to the side." Appellant's App. p. 26. Dr. Stout testified that Donna's pain and loss of range of motion would increase with age. When questioned further, Dr. Stout stated that Donna could possibly work up to four hours a day but he doubted she could do any more than that. Moreover, Donna had experienced an ischemic episode.¹ Based upon this episode, Dr. Stout testified that Donna is at increased risk for a stroke.

In its judgment, the trial court concluded:

As stated in Dr. Stout's sworn testimony, Petitioner Donna Meahl's ability to support herself is materially impaired due to the conditions of arthritis,

¹ A transient ischemic attack, or TIA, is often described as a mini-stroke. Unlike a stroke, however, the symptoms can disappear within a few minutes. TIAs and strokes are both caused by a disruption of the blood flow to the brain. In TIAs and most strokes, this disruption is caused by a blood clot blocking one of the blood vessels leading to the brain. The blockage produces symptoms such as sudden weakness or numbness on one side of the body, sudden dimming or loss of vision, and difficulty speaking or understanding speech. If the symptoms are caused by a TIA, they last less than twenty-four hours and do not cause brain damage. Stroke-associated symptoms, on the other hand, do not go away and may cause brain damage or death. TIAs can serve as an early warning sign of stroke and require immediate medical attention. The Free Dictionary, <http://medical-dictionary.thefreedictionary.com/transient+ischemic+attack> (last visited October 11, 2011).

and osteoporosis and the limitations they impose. Mrs. Meahl's physical condition can reasonably be expected to deteriorate in the future.

Id. at 15. The trial court's award of incapacity maintenance is amply supported by evidence that Donna's conditions have left her incapacitated to the extent that her ability to support herself is materially affected. Moreover, at the time of the hearing, Donna was seventy-four years old and she had been completely absent from the workforce during her twenty-three years of marriage to Leroy. *See In Re Marriage of Dillman*, 478 N.E.2d 86, 89 (Ind. Ct. App. 1985) (stating that in determining incapacity maintenance, trial court must realistically appraise party's employment opportunities, keeping in mind both type and degree of incapacity and present skills and experience). We cannot say that the trial court's award is clearly against the logic and effect of the facts and circumstances; therefore, we find no error.

III. AMOUNT OF SPOUSAL MAINTENANCE AWARD

Intertwined with the prior issue is the issue of the amount of maintenance awarded. Leroy asserts the trial court erred by ordering him to pay Donna \$1,700 per month as maintenance until her death.

Our review of the transcript and materials on appeal reveals that the evidence supports the trial court's findings. With regard to this issue, the trial court found:

29. Mrs. Meahl's only income is approximately three hundred seventy six (\$376.00) dollars net which she receives per month from Social Security and approximately eighty two (\$82.00) dollars interest income per month (see Exhibit 1 of Petitioner's Master Exhibit); Mr. Meahl's income is approximately two thousand two hundred (\$2,200.00) from farm income,

interest, dividends and Social Security (Exhibit 3 of Petitioner's Master Exhibit). Mr. Meahl's total assets are in excess of 1.3 million dollars.

30. Mrs. Meahl's expenses are approximately \$2,200.00 per month, and her shortfall per month after expenses is \$1,700.00. Mrs. Meahl has \$93,000.00 in assets. However Mrs. Meahl must purchase a car and pay substantial lawyer fees from the \$93,000.00 she currently has in assets.

31. The Court hereby finds that Mr. Meahl should pay as maintenance \$1700.00 per month to Mrs. Meahl starting May 1, 2011 and for every month thereafter until Mrs. Meahl's death. The Court further orders that Mr. Meahl secure his obligation to Mrs. Meahl by depositing \$260,000.00 in restricted accounts at Jackson County Bank by placing:

A. \$50,000.00 within six months of the decree of dissolution;

B. \$100,000.00 within one year of the decree of dissolution;

C. \$110,000.00 within two years of the decree of dissolution.

Upon Mrs. Meahl's death any remaining funds in the account shall go to Mr. Meahl or his estate if he should predecease Mrs. Meahl.

Appellant's App. p. 12.

Moreover, in determining the amount of maintenance, trial courts should consider such factors as the financial resources of the party seeking maintenance (including marital property apportioned to her), the standard of living established in the marriage, the duration of the marriage, and the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance. *Temple v. Temple*, 164 Ind. App. 215, 328 N.E.2d 227, 230 (1975). Here, no marital property has been apportioned to Donna due to her signing of the Agreement. In addition, her ability to obtain a job is greatly hampered by her poor health. Donna is seventy-four years old and has not worked outside the house in twenty-three years. During their marriage, Leroy paid for everything except Donna's clothes and gas for her car. In comparison, Leroy has very few expenses because his house and automobiles are paid in full. Thus,

the evidence supports the findings and the findings support the judgment. We find no error.

Leroy also claims the trial court erred by ordering him to pay the money into the restricted bank account. In presenting his argument, Leroy fails to show error by the trial court; rather, he merely states that there was another way, preferred by him, that the trial court could have secured his obligation to Donna. We find no error.

IV. ATTORNEY'S FEES

Donna's second issue on cross-appeal is the amount of attorney's fees the court ordered Leroy to pay on her behalf. Specifically, she contends that due to the parties' differing economic conditions, the amount of attorney's fees Leroy should pay on her behalf should be more than the \$4,000 ordered by the trial court.

The trial court may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending a dissolution proceeding. *See* Ind. Code § 31-15-10-1 (1997). "In determining a reasonable attorney fee award in such proceedings, the trial court should consider the spouses' respective resources, economic condition, ability to engage in gainful employment and earn an adequate income, and other such factors that bear on the reasonableness of an award." *Gillette*, 835 N.E.2d at 564.

On appeal, we apply an abuse of discretion standard to our review of a trial court's award of attorney's fees. *Mason v. Mason*, 775 N.E.2d 706, 711 (Ind. Ct. App. 2002), *trans. denied*. The trial court has wide discretion to award attorney's fees, and we will

reverse its determination only if it is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

In the instant case, the trial court ordered Leroy to pay Donna \$1,700 per month in maintenance until her death. The court noted that Donna has \$93,000 in assets but stated that she had to purchase a vehicle and pay her attorney's fees. The trial court then ordered Leroy to pay \$4,000 of Donna's attorney's fees, presumably based upon their differing economic positions. The trial court's award of \$4,000 is reasonable, and we do not believe it to be clearly against the logic and effect of the facts and circumstances before the court.

CONCLUSION

For the reasons stated above, we affirm the trial court's findings of fact and conclusions of law dissolving the parties' marriage.

Affirmed.

MAY, J., and VAIDIK, J., concur.